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Current Topics.

Benchers of the Inns.

THE learned writer of the much discussed article on "Politics and the Bench" in the *Sunday Times* of 3rd December referred to the undemocratic method by which Benchers of the Inns of Court are co-opted by their brother Benchers, instead of being elected by their fellow barristers. These governing bodies of Benchers, as was pointed out by a correspondent to the *Sunday Times* of 10th December, 1944, signing himself "An Old Member of the Bar," have in their hands the power to call to the Bar and the corresponding power to disbar. Not only, he wrote, have the vast body of barristers no say in the election of their governors, but they have no knowledge of the administration of their Inns of Court, for no reports are published and no accounts furnished. No system, he said, could be calculated to lend itself to more possibilities of abuse, and it says a great deal for the high standard of the Bar that this system should have worked for so many years with so much success. The Benchers of the Inns of Court have maintained an honourable trust honourably, but it cannot be denied that their unlimited power is an archaic survival of their many past privileges. In the seventeenth century a Bencher was entitled to six or seven sets of chambers rent free for his own use, and within living memory each Bencher was entitled to one set rent free. These, it need hardly be said, were sub-let for substantial rents. In Elia's childhood the Benchers had the terrace in front of the Inner Temple Hall "almost sacred to themselves, in the forepart of the day at least. They might not be sidled and jostled." "In those days," he wrote of his infancy, "I saw gods, as old men covered with a mantle, walking upon the earth." The discipline which they maintained over their inferiors was strict. At one time Gray's Inn students who had beards were forced to pay a double charge for daily commons and dinner in Hall, and another edict forbade any officer from holding or enjoying his office "longer than he shall keep himself sole and unmarried, except the steward, chief butler and chief cook." Those days are gone, and with them much of the Benchers' arbitrary rule. What is left of their power is important, and the fact that they exercise it with a high sense of public duty should not close the eyes of the profession to the fact that our professed aim in these days is to convert autocracy and oligarchy into anachronisms.

Women and the Law.

THE October *Quarterly Review* contains an article by MR. C. A. BEDWELL, for many years Librarian of the Middle Temple in the Inns of Court, in the course of which he discussed the position of women at the English Bar during the quarter of a century in which the barrister's profession has been open to them. Development, Mr. BEDWELL stated, has been slow. His explanation for this is that "the rough and tumble of practice, with getting about from one place to another, with a blue bag containing several bulky volumes, has proved a physical strain which was not generally appreciated." He suggested that, apart from that it was arguable that a woman's special aptitude of mind as a general rule was more suited to the work of a solicitor than to the forensic activities of a barrister. We feel obliged to disagree with the view that either physically or mentally women are unsuited to the "rough and tumble" of a barrister's life. Neither the hardest physical work nor the most exacting mental work is denied them in other spheres of life, and there seems no *a priori* reason why it should be denied them in the forensic sphere. Advocates know what it is to be faced with a woman witness who can talk. They find the female of the species more deadly than the male. It takes some male barristers years and even, sometimes, decades to achieve success in their chosen career. Those who do not believe this should read of the late LORD ATKIN'S early struggles. It is not surprising, therefore, that it has taken decades to enable any appreciable number of women to obtain a foothold at the Bar, having regard to the prejudice against employing women barristers, which, be it said, is stronger among lay clients than in the profession. Now that a few women barristers have attained some measure of success, it has become clear that the proportion of the few that are chosen to the many that are called in the case of the "gentle" sex is not very much smaller than the proportion in the case of men. The fact that they do it proves that they can do it.

Lawyers and Handwriting.

THE practice of good handwriting may nowadays seem to have little to do with the profession of the law. Even that *rara avis* of war-time, the junior clerk, is not sought for his copper-plate script as of yore, but merely for his own sake. The late Mr. EDWARD JOHNSTON, who died on 26th November at the age of seventy-two, was an expert and genius in the art of calligraphy and lettering design, and in his unique work "Writing and Illuminating and Lettering" he laid down three criteria of merit: legibility, beauty and character. There are still occasions when lawyers can either admire the presence of these criteria or mourn their absence. There are the pre-typewriter deeds that conveyancers must inspect and sometimes "peruse," the home-made will which brings so much grist to the mill of litigation, and the bundle, often much too voluminous, of sad correspondence that figures in police court and High Court matrimonial suits. Well may the modern solicitor cry out to his client, as Dryden to the objects of his satire, "Learn to write well, or not to write at all." Or at the end of a specially long screed from a client he may echo the same author, who said: "He cannot write who knows not to give o'er." After a desperate effort to read it, he may temporarily retire from the field with the philosophical thought "To write and read comes by nature." Who knows, however, whether "the whirligig of time" will not "bring its revenges," and with the increasing scarcity of shorthand-typists and typewriters solicitors will be compelled to resort either personally or vicariously to copying the letters "with a big round hand" and to write out their own briefs. Happy then will be he who has not forgotten the age-honoured art, and happier still if he preserves unbombed, as well he might, an ancient hand press, father of the modern carbon copy. In the absence of these advantages, he might perforce seek out one of the few remaining law-writers to help him in his distress. If ever this unhappy stage be reached, it may have at least the compensating advantage of reducing the volume of correspondence, which, if we are to believe a recent letter writer in *The Times*, is the cause of much of the expense of litigation. Meanwhile there can be no harm in lawyers trying to improve their handwriting, if only in pity for the typists and printers who must read it.

Divorce Law Reform.

MUCH water has flowed under the bridges since MAULE, J., delivered his famous speech to a convicted bigamist, ironically advising him that he should have instructed his proctor to sue in the Ecclesiastical Courts for a divorce *a mensa et thoro* at a cost of two or three hundred pounds, and that he should then have appeared by counsel before the House of Lords for a divorce *a vinculo matrimonii*, at a cost of a thousand or twelve hundred pounds. Since then a series of Matrimonial Causes Acts and Rules have transformed the laws of divorce and judicial separation. Many of these reforms, particularly those of 1937, were effected only after fierce and lengthy struggles. That the law of divorce has now attained perfection few would contend, although what shape that perfection should take may be the subject of countless different opinions. A solicitor, Mr. G. LEWIS, addressing the Wanstead-Woodford Rotary Club, on 6th November, asked

whether it was advisable or necessary to fix the period of six months after the hearing of a divorce suit before granting a decree absolute. He suggested that the decree *nisi* might be abolished, in undefended suits, on the purely legal ground that all sworn evidence had been received and weighed and a decision on the legal rights of the petitioner given. Why, he asked, should it be necessary to lodge a further formal application. It is interesting to recall that the decree *nisi* was introduced by an Act of 1860, which enacted that it was not to be made absolute until three months thereafter. This period was extended to six months in 1866. There may be two opinions as to whether this provision is the best safeguard against collusion or lack of frankness, but none can doubt that the King's Proctor performs his functions with care and propriety. With regard to the suggestion that a hearing by a High Court judge is otiose, "all sworn evidence has been received and weighed," if this is a correct report of the address, it cannot be said to be based on fact, for the registrar merely certifies "that the pleadings and proceedings in the cause are correct," and the petition and affidavit in support rarely contain the whole of the evidence. Many Government committees, including the latest one of 1934–36, advocated that no one under the status of a High Court judge should try divorce courts. The Biblical rule of writing a bill of a divorcement, putting it in a wife's hand and sending her out of the house, may have been suited to the times for which it was made, but is hardly appropriate to-day. The drastic shortening of modern divorce proceedings might well lead to the adoption of some similar rule.

Patent Law Amendment.

THE Council of the Chartered Institute of Patent Agents has submitted a memorandum of its evidence for the consideration of the recently appointed Committee on Patent Law. The most important improvement needed in the trial of all patent actions, the council holds, is the reduction of litigation costs. The result of high costs is that the mere threat of litigation may result in coercion of a less wealthy disputant; and the council emphasises that patent tribunals must be accessible to all. It recommends that a new tribunal of first instance should be set up, independently of the High Court or of the Patent Office, to try actions and hear applications. Such a tribunal, possessing specialist qualifications, would take a shorter time to arrive at its decision. The council adds, however, that it realises that any proposal which would make the practice and procedure in patent law quite different from those in other branches of law would probably not be acceptable. Mere lawyers will be inclined to agree, having regard to the fact that it is the privilege of every citizen of a democratic State to have his disputes tried in the State's courts according to the well-established rules of evidence and procedure devised for his protection. There is no foundation for the suggestion that better justice could be obtainable in courts where properly qualified judges and lawyers who are best trained to hear both sides impartially are excluded. As to the misuse of patents to the detriment of the public interest, the Council states that after inquiries among members of the Institute an overwhelming majority of the members had not come across a single example of a patent used for the repression and retardation of competitive developments in the United Kingdom. It admits, however, that there is evidence of a tendency for holders of considerable numbers of patents to grant licences with conditional clauses which might discourage development and individual research by private firms. The majority of the members think that the existing law, however, is adequate, with relatively minor alterations, to check any such forms of abuse. The Council is against the proposal to endorse all patents "Licences of Right," either at the time the patents are granted or later, on the ground that the result would be to retard rather than to facilitate the flow of inventions.

Town and Country Planning Development.

TEMPORARY regulations came into effect on 18th November, 1944 (S.R. & O., No. 1309, the Town and Country Planning (Development by Authorities) Regulations), and are to remain in force, unless previously revoked, for six months, under which it will not be necessary during that period to obtain the consent of the Minister of Town and Country Planning under s. 32 of the Town and Country Planning Act, 1944, in respect of any development carried out during the continuance in force of the regulations by local authorities mentioned in that section, unless the Minister has given written notification to the authority requiring an application to be made for his consent. The relevant s. 32 provided that development by local authorities who are themselves the interim development authority or the authority responsible for the enforcement of a planning scheme in the area in which the development takes place may not be carried out without the Minister's consent. A circular dated 28th November, 1944, from the Ministry to all local authorities and joint planning boards in England and Wales, points out that it is intended to make regulations under s. 32 (5) which will dispense with the necessity for the Minister's consent in relation to certain classes of development carried out by local authorities. It is stated, however, that the precise determination of these classes cannot, in view particularly of the need for consultation with the associations of local authorities, be made at once. The circular also emphasises the importance, in all cases, of full consultation between any committee of an authority which is responsible for the promotion of development and the committee of that authority which is responsible for the administration of the Planning Acts.

Finances of Local Authorities.

IT seems that in the years after the war local authorities are to bear a major part in the war that is to be waged against unemployment. The recent White Paper on unemployment envisages successive periods of five years, at the beginning of each of which local authorities will be asked to submit their programmes of capital expenditure. It is therefore vital that local authorities' finances should commence on a sound basis. In two exceptionally well-informed special articles in *The Times* of 4th and 5th December a correspondent surveyed the whole of the financial system of local authorities in England and Wales. The salient fact, he stated, was that the revenue from rates had fallen increasingly behind the demands for additional expenditure quite apart from the fact that rateable values would be fifty to sixty million pounds higher but for de-rating, and possibly a further £60,000,000 higher but for the policy of under-valuation, particularly of houses built after 1920. Rates are, however, easy and cheap to collect, said the correspondent; rateable values do not vary much from year to year, and are a form of taxation forming a stable basis for local democracy. He suggested the creation of a Central Valuation Department for the purpose of assessing rateable values and annual values under Sched. A. He considered that this would not be a threat to local government as "assessment is purely technical and legal." It would, he said, secure both uniformity in rating and a higher rateable value. He also suggested that the present de-rating system should be reconsidered, and approved the block grant as it enabled the local authority to see where it stood for several years ahead. He also approved the specific grants for new services or services which are in process of expansion. A local authority whose rateable value already provided a reasonable figure of rateable value per head should, the correspondent stated, receive no part of the block grant, while an authority which needed a grant of much more than half the cost of its services should, he said, *prima facie* be considered for abolition. The articles stressed the enormous annual capital expenditure of local authorities and the war-time paradox that, while local authorities have been paying off so much of their debts by restricting their capital expenditure, the central government has been increasing its debt. The serious implications of this fact will be mitigated to some extent by a cheap money policy and control of access to the capital market, announced in the recent White Paper. It is some comfort to know that the central authority will not be groping entirely in the dark, but will be largely guided by experience of the years following the last war.

Proceedings in Camera.

SUBJECT to necessary safeguards for national defence purposes as well as for preserving public decency, there is no higher interest than that justice should be administered in open court. Trials behind closed doors may well be suspected to be guided by other motives than the desire to do justice. This paramount interest makes it necessary for all judges to grant applications for trial in camera only with the greatest caution. Before the war s. 8 (4) of the Official Secrets Act, 1920, contained a necessary safeguard giving the court a discretion on the ground of national safety, on the application of the prosecution, to order that all or any part of the public should be excluded during any part of the trial of an offence under the Official Secrets Acts, 1911 to 1920, or the proceedings on appeal, but not during the passing of sentence. For the period of the war this provision has been merged into s. 6 of the Emergency Powers (Defence) Act, 1939, which gives the court similar powers in all proceedings to exclude the public or classes of the public, or prohibit or restrict the disclosure of information. During the present war judges have had occasion once or twice to stress the paramount necessity for public hearings, but they have hardly felt able to resist official applications under the section. Technically, as the Master of the Rolls said on 8th December in *Baker* v. *Bethnal Green Corporation* of the application in that case, it is a matter for the exercise of the judicial discretion, but in practice he can do nothing but accede to the application, made on instructions, by the Attorney-General. In that case the Master of the Rolls expressly exempted both the learned judge and the Attorney-General from blame, but said that so far as he understood, the only ground of public security which influenced the mind of the Ministry was the possibility that a witness might say that there had been a panic when in fact it was perfectly well known before the trial that there had not. His lordship thought that if ever there was a case in which the evidence should have been given in open court so that other witnesses might come forward to assist the court, this was it. Reasons for the application, he said, should be solid and not of the flimsiest, as in this case. A particular danger to which his lordship drew attention was that

"gradually and by degrees the conception of what was really necessary in the public interest became whittled down until circumstances which should not be so regarded came, unconsciously and in good faith, to be regarded as matters of public interest." "The present case," he said "was one which led to a critical examination of what a public authority had done in performing its duty to the public, and in which, conceivably, some officials of the Ministry might have been subject to some kind of criticism, though those words must not be taken as a finding that such had been the case." This is a salutary and timely pronouncement, which, we trust, will be learned, marked and inwardly digested by all public authorities.

Safeguards of Criminal Law.

THE New York University *Law Quarterly Review* for June, 1944, contained, in the course of an article on "The Right of Counsel under the Sixth Amendment" an interesting survey of the safeguards that surround a defendant at the trial of a criminal case, and which the writer, Mr. ALEXANDER HOLTZOFF, said "are to-day viewed as elementary and indisputable principles—in fact as part of the warp and woof of Anglo-American jurisprudence." He instanced the presumption of innocence, leading to the corollary that the prosecution has the burden of proving the defendant's guilt beyond a reasonable doubt; the privilege against self-incrimination; the defendant's right to be confronted with the witnesses against him and the right of counsel. The writer made the startling declaration that these rights are of comparatively recent origin, and prior to the Revolution of 1688 were practically unknown to the common law. He gave the examples of the cases of Love (1651), 2 Howell's St. Tr. 53, 205, 206, charged with high treason, who was refused a copy of the indictment, and the similar case of Hewet (*ibid.*, 883, 892). Two instances of the hazardous nature of service on juries were the cases of Throckmorton (1 Howell St. Tr. 901), where the jury were immediately after acquitting the defendant committed to prison for a considerable period, and a similar case, Lilburne, 5 Howell St. Tr. 407, where the jury were summoned before a Council of State to answer for their conduct in acquitting a defendant. The right to representation by counsel was given from time immemorial to defendants charged with misdemeanour, but not to persons accused of treason or felony, except at the discretion of the judge for the purpose of arguing a point of law (5 Howell St. Tr. 1034). This was remedied by an Act of 1698 in regard to treason charges, but not until 1836 as regards charges of felonies. The remainder of the article is devoted to an examination of the Sixth Amendment to the U.S. Constitution, which became effective in 1791 and which guaranteed to defendants in criminal prosecutions all those safeguards which are so integral a part of the criminal law of this country, including the assistance of counsel. The fact that these liberties have been won so hardly and so recently should strengthen the resolve of all who understand what they mean to be ready to fight for them in peace as well as in war.

Capital Control.

IN drawing attention in a recent issue (*ante*, p. 402) to the new Order controlling capital issues, reference was made to the desirability of application for Treasury sanction being permitted before incorporation. It now appears that this arrangement is at present unnecessary. Sanction will, we understand, only be refused in those cases where the issue appears to the Treasury to be part of a transaction of wider scope. The inconvenience in the case of genuine small companies will not, therefore, amount to more than the necessity for waiting, in normal cases for not more than a month, for Treasury consent before issuing capital other than that permitted by para. (2) of the 1941 Order. The powers given to the Treasury by the new Order are, however, very wide; if they are to be used in any other way than is at present indicated, there is a clear obligation to give due notice.

Recent Decisions.

In *In re Cochrane, deceased, Cochrane* v. *Turner and Another*, on 7th December (*The Times*, 8th December), UTHWATT, J., held that estate duty was payable on a life interest in settled funds on the death of a husband who, in a marriage settlement purporting to settle funds in trust to pay the income to his wife for his life, had added words restricting the purposes upon which his wife might expend such income to "current household expenses or management." His lordship held that the husband's long acquiescence in his wife's use of the income for her own purposes did not suggest that he had released his rights, and therefore he had a life interest in the settled funds which passed under the settlement on his death.

In *Baker* v. *Bethnal Green Corporation*, on 8th December (*The Times*, 9th December), the Court of Appeal (THE MASTER OF THE ROLLS and MACKINNON and DU PARCQ, L.JJ.) upheld the decision of SINGLETON, J., that the defendants were liable for negligence in inviting and permitting the plaintiff's deceased husband to enter a public air-raid shelter with a defective access, so that he was killed in the crowd which piled on the staircase.

Presumption of Intestacy.

IT is becoming more and more difficult in the construction of a will to rely on any general principle. The judges like to feel that the construction is at large. One of the latest instances of this is to be found in *Re Abbott*, 88 SOL. J. 406, where Lord Greene, M.R., stated that the suggested presumption against intestacy was a dangerous line of thought. Still, there are dicta by eminent judges which may be useful for counsel who have to argue against an intestacy. Thus, in the old case of *Booth* v. *Booth*, 4 Ves. 399, at p. 407, the then Master of the Rolls said: "That there is a difference between a bequest of a legacy and a residue, with reference to this point, cannot be denied, either upon principle or precedent. Every intendment is to be made against holding a man to die intestate, who sits down to dispose of the residue of his property." We must jump from that case in 1799 to *Re Edwards* [1906] 1 Ch. 570, where Romer, L.J., said (p. 574): "It is said that the court leans against an intestacy. I do not know whether that expression at the present day means anything more than this, that in cases of ambiguity you may, at any rate in certain wills, gather an intention that the testator did not intend to die intestate, but it cannot be that merely with a view to avoiding intestacy, you are to do otherwise than construe plain words according to their plain meaning. A testator may well intend to die intestate. When he makes a will he intends to die testate only so far as he has expressed himself in his will.

The statutory scheme of distribution of a person's property, if he makes no will, has been regarded as a statutory will, and it may well be that a person may be satisfied with the destination of his property in the event of his intestacy. For instance, an unmarried man leaving parents may be quite satisfied with those parents taking all his property, and so excuse himself from making a will. If, however, he does make a will, one would expect him to deal with all his property and not to provide that part should pass under his will and part on his intestacy. There is nothing to prevent his doing so, if he so intends, but we submit that it is more unlikely that he should wish to do so, and therefore the court would lean against the partial intestacy. That appears to have been the opinion of the late Lord Shaw of Dunfermline, as in *Lightfoot* v. *Maybery* [1914] A.C. 782, at p. 802, he said: "The mind never inclines towards intestacy; it is a *dernier ressort* in the construction of wills." With deference, it is hard to reconcile that dictum with the dictum of Lord Greene. Again, in *Re Hooper* [1936] 1 Ch. 442, at p. 446, Lord Wright, M.R., stated: "The effect of this view would be to create an intestacy; a conclusion against which the court will always strain." We are suggesting that there is a leaning or presumption against an intestacy, but like every presumption it can be rebutted, so that the court will not do violence to the language of the will, but merely on an ambiguity endeavour to avoid an intestacy, whole or partial.

A Conveyancer's Diary.

Actions of Account by Reversioners.

A LEARNED friend has called my attention to a very curious situation which appears to have been created, no doubt in error, by the Limitation Act, 1939. Under the Limitation Act, 1623, the legal action for an account was (with an exception repealed in 1856) subject to a six-year period of limitation. The legal action had fallen into disuse sometime during the eighteenth century owing to its clumsy procedure. In the meantime, the Court of Chancery had developed the bill in equity for an account, a process which was generally available where an action for an account would have lain and also in those instances where equity held that a party was accountable though common law did not. Where the bill in equity was invoked to enforce a legal right, equity acted by analogy and followed the law in applying a six-year period of limitation. But where the position of the accounting party was fiduciary, equity gave an account without limit of time. This rule might be thought to have been mitigated by s. 8 (1) (*a*) of the Trustee Act, 1888, under which a trustee was permitted to plead the statute as if he were not a trustee, unless he was guilty of fraud or had still got the trust property or had previously converted it to his use. But actually, as we shall see, that section did not alter the position.

Let us imagine a case where there is a trustee of a settlement, created in 1920, under which there is a tenant for life, and a person entitled absolutely in reversion. The tenant for life dies in 1938 and the reversioner at once calls for an account. Under the law then in force he could no doubt have obtained the relief which he sought. Equity requires a trustee always to be ready with his accounts, so that, in a sense, the reversioner's cause of action accrued right back in 1920 (subject to any suspension for infancy, etc.), but the trustee could not have pleaded the Trustee Act, 1888, because the relief sought was purely equitable relief, in respect of which there was no period of limitation at all, while that Act merely gave him the right in certain instances to plead the statute as if he were not a trustee. In this connection the learned editors of the second edition of "Darby and Bosanquet's Statutes of Limitations," writing in 1893, observed that, although the modern proceeding replacing the old bill in equity for an

account is called an action under R.S.C. Ord. I, r. 1, it can hardly be an action of account within the meaning of the Statute of James, which applies simply to actions at law (p. 239). As I understand it, therefore, the reversioner, starting proceedings in 1938, could have got his account right back to the start of the trust in 1920; the ground would have been that no statute of limitation applied to such a proceeding at all, not that the cause of action did not accrue while his interest was in reversion.

But if the tenant for life dies in 1944 the position appears to be quite different. The Limitation Act, 1939, has, in the meantime, come into force. By its definition section, the word "action" is to include "any proceeding in a court of law, including an ecclesiastical court" (s. 31 (1)). By s. 2 (2), "An action for an account shall not be brought in respect of any matter which arose more than six years before the commencement of the action." There can be no doubt at all, having regard to the definition of "action," that s. 2 (2) covers an action for relief which would in the old days have been obtained by a bill in equity and not merely an action for such relief as could in even older days have been obtained in the archaic action at law for an account. The reversioner issues his writ for an account and puts in a statement of claim setting up his title and claiming an account. (Equally this relief could be obtained on originating summons, but the proceedings in an action started by writ bring out the point more clearly.) The trustee, who, we shall suppose, handed over the entire fund in 1930 in good faith to a deserving charity, pleads in his defence (i) that he has had none of the fund in his hands within six years; and (ii) that he relies on s. 2 (2) of the Limitation Act, 1939. What is the reversioner's reply to say? He appears to be defeated unless he can find another provision in the Act which will displace s. 2 (2) in circumstances such as these.

Section 2 (2) is in Pt. I of the Act, and s. 1 provides that all the provisions of Pt. I shall have effect subject to the provisions of Pt. II, which comprises ss. 22–26, inclusive. These sections provide for extensions of the period where the plaintiff is under disability, where there has been an acknowledgment or part payment or a fraud or a mistake (of fact). None of such sets of circumstances seem to be present here. The nearest is fraud, but I do not think s. 26 would be held to apply: the action would be for an account, the ordinary right of a beneficiary against a trustee, and would need no fraud to sustain it; nor is it suggested that the situation was fraudulently concealed.

The reversioner thus cannot invoke one of the extensions of the period contained in Pt. II, and there seems in respect of an action barred by s. 2 (2) to be no other way open to him. Section 2 (2) differs from the provisions relating to actions to recover land in that there is nothing in it to correspond with s. 6 (1), which postpones the date of accrual of the action to recover a future interest in land until the interest falls into possession. Again, the fact that the defendant is a trustee does not, of itself, protect the plaintiff against the consequences of effluxion of time. Section 8 (1) (*a*) of the Trustee Act is replaced by s. 19 (1) of the Act of 1939, under which "no period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—(*a*) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or (*b*) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his use." The circumstances required by s. 19 (1) (*a*) are not present in the case before us, and s. 19 (1) (*b*) does not refer to actions of account at all. It will be noted that s. 19 (1) differs widely from s, 8 (1) (*a*) of the Act of 1888. The latter allowed a trustee to plead any Statute of Limitation which would have been available to him had he not been a trustee with exceptions for fraud, retention and conversion. As matters now stand, the Act applies to all defendants in all kinds of action, but a trustee who puts himself within s. 19 (1) by fraud, retention or conversion loses the protection of the Act.

The reversioner whose case we are considering thus seems likely to fail in his action for an account. But I do not think that he is without a remedy at all. He can bring an action for breach of trust, and to that there will be no defence of limitation. Under s. 19 (2) of the Act of 1939 it is provided that, subject to s. 19 (1), "an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued: provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession." In such an action the reversioner will have six years from the date of the death of the tenant for life in which to start his action. But I should expect the action to be unnecessarily difficult to manage. Claims for breach of trust are almost invariably coupled with claims for "all necessary accounts and inquiries." That, I conceive, is done for at least two reasons: first, that, assuming the breach of trust is proved, it is still necessary to find out by accounting what was the extent of it; and, second, that a person who can show that he is a beneficiary is entitled as of right to an account from his trustee (questions of limitation apart), so that by his claim for an account he may well obtain the materials necessary for getting the claim for breach of trust on its feet. Without an account he would have to make his own case by his own researches, as in the case of other hostile litigation. I cannot think that that is a very satisfactory state of affairs, nor, indeed, that its creation was intentional. The remedy seems fairly plain: there should be inserted at the end of s. 2 (2) a proviso to the effect that a beneficiary having a future interest under a trust shall, during six years after his interest falls into possession, have a right to call for any account to which, but for this section, he would have been entitled in equity. The six-year period may, perhaps, be too long for such a case; if so, it could be curtailed, and the reversioner's period under s. 19 (2) should then be correspondingly shortened.

Landlord and Tenant Notebook.

Compensation for Goodwill: the five years.

SINCE L.T.A., 1927, was passed, we have had a good deal of authority illustrating the limitations on the right to compensation for goodwill contained in the seven provisoes to s. 4 (1) and in the later subsections of that section. The importance of showing that the goodwill has become attached to the premises, and that it has so become attached by reason of the carrying on at the premises of the particular trade or business, as required by main part of subs. (1), have also been brought home to us. But there is one phrase in that main part which, I think, may some day find itself the subject of forensic argument. I italicise it in the following extract: "The tenant shall . . . be entitled . . . to be paid by his landlord compensation for goodwill if he proves . . . that by reason of the carrying on *by him or his predecessors* in title at the premises of a trade or business *for a period of not less than five years* goodwill has become attached to the premises . . ."

Obviously, a tenant whose seven years' lease is drawing to a close is within the above words. And this would apply whether he were original grantee or assignee, even a recent assignee, and if he paid a substantial premium that would help him prove the rest of the case. But there are sets of circumstances in which the position is, I suggest, somewhat doubtful, and of which I will give two hypothetical instances: (1) A, freehold owner of a shop, at which he has carried on a business for some four years, sells it to B (it may be in order to finance development), subject to B granting him a lease for three years. (2) C takes a tenancy of shop for three years; it is followed by a tenancy from year to year, created either by express grant or by holding over; D, his landlord, gives him six months' notice to quit expiring with the third year of the yearly tenancy.

In case (1), the tenant would contend that he has done exactly what the Act says he must do in order to qualify. Goodwill has become attached to the premises by reason of the carrying on by him for a period of not less than five years at the premises of a trade. The landlord would no doubt answer that the tenant had not carried on the trade for five years at the premises as a tenant, and a question of interpretation would thus be raised: namely, whether there is anything to warrant the reading of "not less than five years" as "not less than five years as a tenant." Perhaps the strongest argument would be based on the reference to predecessors in title: "by him or his predecessors in title." It would be contended that this shows that the tenant of a holding (who is, grammatically, the subject of the subsection) need not be one who has carried on the business for five years, but that there must be a title to at least five years' leasehold interest before the provision can apply. Otherwise, it might be said, there would be an arbitrary distinction between a tenant who took a three years' lease of a shop where a business had been carried on for two years by its owner and one who took an assignment of the last three years of a five years' term. There is, no doubt, some force in this argument; but the landlord would have to show that the occasion merited the examination of context, for on the face of it it does not seem to matter whether the tenant commenced building up the goodwill as tenant, freeholder, or trespasser.

In the other case, (2), that of the tenant who has held under successive tenancies totalling five years or more, the claimant can again say that he literally fulfils the condition. In general, it seems to be in keeping with the object of the section that he should be qualified for compensation though he has not held by virtue of the same title. As against this, it may be pointed out that the landlord, by insisting on an interval of a day or two before granting any new tenancy, and, if necessary, by giving notice to quit at the end of the fourth year in order to create the required break, may anticipate the claim; for I doubt whether it could long be argued that the five years need not be a continuous period. Thus the tenant whose landlord omitted, out of carelessness, to take this precaution would acquire an undeserved advantage over some competitor with a more astute landlord. The answer this time would be, I think, that the Act does not seek to regulate the position as between trader and trader, but merely to prevent a landlord from reaping where he has not sown, and that it was considered right to define a minimum period.

And, in support of the proposition that a tenant who has held under successive tenancies each of less than five years may qualify, reference may be made to the interpretation section, s. 25, subs. (1) of which commences: "The expression 'tenant' means any person entitled in possession to the holding under any contract of tenancy, whether the interest of such tenant was acquired by original contract, assignment, operation of law or otherwise." The "operation of law" variety will normally be a tenancy created by holding over after a fixed term, and the Act does not, I submit, contemplate that a tenant who holds over after, say, a three years' lease has expired would have to be left undisturbed for a further five years before he would be entitled, at the termination of the tenancy on quitting the holding, to be paid by his landlord compensation for goodwill, etc.

To-day and Yesterday.

LEGAL CALENDAR.

December 11.—In November, 1747, Sergeant Smith was convicted of having joined Prince Charlie's insurgents. On the 11th December he "was conducted from the Savoy to the Parade in St. James's Park and from thence by a party of the Foot Guards commanded by Colonel Dury, attended by the minister of the Savoy, to Hyde Park, where he was hanged on a gibbet erected for that purpose and buried near it; he seemed not much concerned and professed himself a Protestant. He had been in the service of several princes and abused them all by desertion. Having thus acquired divers languages, he was of great service to our officers in Germany as interpreter, who treated him as a companion and promoted him to be paymaster sergeant, by which and other perquisites he had above £200 per annum, but he could not overcome his propensity to change."

December 12.—On the 12th December, 1863, George Victor Townley was tried at the Derby Assizes for the murder of Miss Elizabeth Goodwin, who had broken off her engagement to marry him. His father was a commission agent in Manchester; she was living at Wigwell Grange with her grandfather, Captain Goodwin, a magistrate of the County of Derby. The discarded suitor had called for a last interview to hear from her own lips what her wishes were, and in the course of their interview in the grounds, he stabbed her three times in the neck. She died while she was being carried to the house. The defence of insanity was set up, but the jury, with the full approval of Mr. Baron Martin, returned a verdict of guilty, after an absence of only five minutes. A report under the Lunacy Act signed by various justices and medical men was afterwards sent to the Home Secretary, who was induced to commute the death sentence. Subsequently, however, a mere formal examination, authorised by himself, resulted in a report that Townley was perfectly sane. He was afterwards removed to Bethlehem Hospital.

December 13.—In 1790 the women of London were terrorised by a series of mysterious street assaults committed by a man who sometimes "presented a nosegay to a young female wherein was concealed a sharp instrument and, as he offered them the flowers to smell, stabbed them in the face." Other girls were "stabbed in the thigh and behind." One night after eleven o'clock a girl named Ann Porter, daughter of a tavern keeper in St. James's Street, was returning home with her sister from an entertainment when she felt herself stabbed on the right hip. She recognised her assailant as a man who had followed her several times before addressing her in gross language. On the 13th December a man named Renwick Williams was tried at Hicks's Hall, Clerkenwell, for the assault. After a trial of fifteen hours he was found guilty and condemned to two years' imprisonment in Newgate on this and each of two other charges of which he was found guilty, six years in all.

December 14.—In 1594 Gray's Inn held at Christmastide the great revels of Gesta Grayorum presided over by a member of the society styled Prince of Purpoole, Archduke of Stapulia and Barnardia with many other highsounding titles. There attended on him a large and elaborate court. This is the invitation they sent to the Inner Temple: "Most Grave and Noble, We have upon good consideration made choice of a Prince to be predominant in our State of Purpoole, for some important causes that require an head or leader; and, as we have ever had great cause, by the warrant of experience, to assure ourselves of your unfeigned love and amity, so we are, upon this occasion, and in the name of our Prince Elect, to pray you that it may be continued; and, in demonstration thereof, that you will be pleased to assist us with your counsel, in the person of an Ambassador that may be resident amongst us, and be a Minister of Correspondence between us; and to advise of such affairs as the affects whereof, we hope, shall sort to the benefit of both our Estates. And so, being ready to requite you with all good offices, we leave you to the protection of the Almighty. Your most loving Friend and Ally, Gray's Inn. Dated at our Court of Graya the 14th of December, 1594."

December 15.—Handsome, graceful and engaging, John McNaughton, the son of a merchant who had been an alderman of Dublin, had brilliant qualities which filled his early life with promise, but reckless gambling broke his fortune and utter lack of self-discipline completed his ruin. In the decline of his resources, he set himself to woo a lovely young heiress of fifteen, hoodwinking her father, at whose house he was a constant visitor, and eventually inveigling her into reading through a form of marriage with him in play. After that he claimed her as his wife and was forbidden the house. For some months he flitted about in a shadowy fashion, and finally, with the help of some accomplices, he ambushed the coach in which she was driving with her father, discharging a gun into it and killing her immediately. He was condemned to death and hanged near Strabane on the 15th December, 1761. He wore a white flannel waistcoat with black buttons, on his head a diaper night cap tied with a black ribbon, on his legs white stockings and round his arm crepe. At the gallows he mounted the ladder with spirit and leapt from it so violently that the rope snapped. Uninjured, he climbed it again, tied the noose himself and jumped once more into space, dying in a minute. He was in his thirty-eighth year.

December 16.—The Rev. Charles Jenner applied to John Minter Hart, an advertising moneylender, for a loan of £200. Hart waited on him at his father's house in Chesterfield Street and, having required him to sign a bill of exchange for that amount, went off saying he would return with the money in half an hour. In fact he never brought it, but he afterwards sold the bill of exchange for 5s. in the pound, having altered the amount of £200 to £500. He was tried at the Old Bailey for forgery on the 16th December, 1836, convicted and condemned to transportation for life.

December 17.—On the 17th December, 1761, "a sailor belonging to the *Burford* man-of-war was hanged on board the said ship for the murder of his mess-mate, a man of a sober character, by stabbing him in the belly."

THE COMMON INFORMER.

An evening newspaper was recently moved to devote a leading article to demanding the abolition of the common informer. It observed that a Select Committee had reported that he was "generally regarded as an anachronism and his rights as useless and objectionable" and pointed out that he could recover heavy penalties from members of Parliament who sat or voted when disqualified. In 1913 a common informer tried to recover £17,500 from Sir Stuart Samuel, alleging that he had sat and voted in the Commons thirty-five times, while disqualified as belonging to a firm of government contractors, but the claim failed. (The case is reported as *Forbes* v. *Samuel* [1913] 3 K.B. 706.) The article further hinted that common informers sometimes levied a sort of blackmail, taking compromise payments to refrain from bringing charges. About 1838 this was known to be a constant practice. At that time the magistrates were much concerned at the "degraded set of persons" who followed the calling and it was proposed to raise their status by obliging them to take out licences. They flourished in the forest of petty regulations which grew out of a multitude of Acts of Parliament. One of the Acts relating to licensed premises proved a precious source of revenue. It required a licensee to state over the entrance door to his premises that he was licensed to retail beer, etc., for consumption. Possibly by a misprint one unimportant word was put in capitals. The informers hit on this and regularly recovered a £10 penalty payable without mitigation by any unfortunate publican who failed to satisfy the Act by using capitals likewise. The Home Secretary was recently asked questions in the House of Commons as to a supposed recurrence in the activities of the common informer.

Books Received.

The New Law of Education. By D. J. BEATTIE, LL.M., Solicitor of the Supreme Court, and P. S. TAYLOR, M.A., Education Officer of Chatham. With a Foreword by EVAN T. DAVIS, M.A., of the Middle Temple, Barrister-at-law. 1944. pp. xx, 296 and (Index) 39. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

Transactions of the Grotius Society. Vol. 29. Problems of Peace and War. Papers read before the Society in 1943. pp. xxiii and 170. London: Longmans, Green & Co., Ltd. 15s. net.

Burke's Loose-leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-law. 1943–44 Vol., Part 13. London: Hamish Hamilton (Law Books), Ltd.

The Journal of Comparative Legislation and International Law. Third Series. Vol. XXVI. Parts III and IV. November, 1944. London: Society of Comparative Legislation. 10s. net.

The Solicitors' Diary, 1945. Edited by PAUL URBAN, Solicitor of the Supreme Court. 101st year of publication. pp. xxxii and 870. London: Waterlow & Sons, Ltd. 19s. net (half bound, law calf), and 17s. net (cloth gilt). Three days on a page.

King Edward's Hospital Fund for London. Statistical Summary of the Income, Expenditure and Work of 169 London Hospitals for the year 1943. October, 1944. 1s. net.

Our County Court Letter.

Warranty of Mare.

In *Soper* v. *A. Hunt*, at Northampton County Court, the claim was for £15 8s. as damages for breach of warranty. The plaintiff's case was that he saw in a newspaper the following advertisement: "For immediate disposal. Suffolk Cart mare, 7 years; warranted sound, quiet, good worker in all gears. £65." The plaintiff bought the mare in response to the advertisement for £60, but she was tried and found to be unworkable. The plaintiff therefore sent to the defendant the following telegram: "Returning mare. Not as warranted. Kicker. Soper." The plaintiff subsequently met the defendant and complained about the mare, but the defendant refused to take her back. After costing the plaintiff the price of her keep for fifteen weeks, the mare was sold in dispute at an auction sale for £25. The defendant's case was that he had himself bought the mare as a good worker, and she was still a good worker at the date of the sale to the plaintiff. His Honour Judge Forbes held that the advertisement was a sufficient warranty. The mare conformed to none of the claims made for her, and judgment was accordingly given for the plaintiff for £42 5s., with costs.

Damage to Fowls by Dogs.

In *Walker* v. *Mobley and Rainbow*, at Northampton County Court, the claim was for £22 10s. as damages in respect of fowls killed and injured by the dogs of the defendants. The plaintiff's case was that on Sunday, 20th August, he found two of his fowls had been killed. The next day he saw two dogs attacking and killing his stock. He was sure they were the dogs of the respective defendants. The plaintiff's wife and his child (aged 11 years) gave evidence identifying the two dogs. The first defendant's case was that three other people in the locality owned dogs similar to his. The plaintiff had not taken steps to minimise the damage, as he had given some fowls away to people at a distance. The second defendant's case was that two people in the neighbourhood (whom he named) each owned two dogs, one similar to his own dog and one similar to the first defendant's dog. His Honour Judge Forbes observed that, although other people owned similar dogs, he was satisfied (in view of the evidence of identity) that the dogs which had caused the damage were the property of the defendants. Judgment was accordingly given for the plaintiff for £15 10s., and costs. Compare *Arneil* v. *Patterson* [1931] A.C. 560. In that case two dogs, the property of different owners, acting in concert, attacked a flock of sheep and injured several. The House of Lords held that, when once liability under the Dogs Act, 1906, s. 1 (1), was established, the ordinary measure of damages had to be applied. In law each of the dogs occasioned the whole of the damage, as the result of the two dogs acting together. Consequently, each owner of a dog was responsible for the whole of the damage. A plea by one dog owner that he was liable only for one half of the damage was therefore unsuccessful.

The Definition of a Tenant.

In *Price* v. *Pollard*, at Northampton County Court, the claim was for £33 as arrears of rent of two unfurnished rooms in the house of the plaintiff. The plaintiff's case was that the defendant was his aunt and had occupied the rooms in his house as a tenant. The latter allegation was denied by the defendant, whose case was that the plaintiff had asked her to live at his house. The question of rent was not raised. On one occasion when the defendant returned to the house it was locked up. She had to fetch the police to help her to enter, and she was told to move the next day. The defendant was willing to pay for her keep, and offered £1 a week for this purpose. His Honour Judge Forbes held that the evidence given by the defendant was the more probable version. Judgment was therefore given for the defendant, with costs.

Obituary.

Mr. H. C. P. Day.

Mr. Henry Chesmer Poulden Day, solicitor, of Messrs. Day and Wright, solicitors, of Bristol, died recently aged fifty-five. He was admitted in 1913.

Mr. J. Formby.

Mr. Jonathan Formby, barrister-at-law, of Formby, Lancs, died on Sunday, 10th December, two days before his ninety-first birthday. He was called by the Inner Temple in 1878.

Mr. R. K. T. Nightingale.

Mr. Ralph Kenneth Taylor Nightingale, M.C., solicitor, of Messrs. Frank Taylor & Nightingale, solicitors, of Putney, S.W.15, died on Sunday, 26th November, aged fifty-one. He was admitted in 1929.

Mr. H. E. Thomas.

Mr. Herbert Edward Thomas, solicitor, of Messrs. H. E. Thomas and Co., solicitors, of Bexley, and Woolwich, S.E.18, died on Friday, 8th December. He was admitted in 1887.

Points in Practice.

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Will—Gift over after an Absolute Gift—Effect.

Q. A client of ours died leaving one freehold cottage as the sole estate. The following clause appears in his home-made will after the appointment of an executor: "I give and bequeath all my real and personal estate of every description unto my wife A B absolutely, at her death all property and estate to be divided between B C and D E my two youngest sons." Does the principle apply in *Re Jones, Richards* v. *Jones* [1898] 1 Ch. 438 and *Re Dunstan, Dunstan* v. *Dunstan* [1918] 2 Ch. 304, or the principle in *Re Dixon, Dixon* v. *Dixon* (1912), 56 Sol. J. 445?

A. We think this is a case where, on the construction of the will as a whole, the gift to the wife must be cut down to a mere life interest. We quote the following from p. 432 of vol. II of the 12th edition of Emmett's "Notes on Perusing Titles": "In fact, speaking generally, the cases appear to have established that where a gift in terms absolute is followed by a gift of the same property *on the donee's death*, the former gift is by implication cut down to a life interest . . ."

Undivided Quarter vested in Trustee in Bankruptcy—Trustees not disposed to sell—L.P.A., 1925, s. 26.

Q. The bankrupt has a fourth share in three small freehold houses. The property is held by two trustees on trust for sale for the bankrupt, two brothers and a sister, with power to postpone sale, in equal shares as tenants in common. The trustees refuse to do anything in the matter regarding the sale of the property. It is considered that if the property could be offered by auction, a good price would be obtained owing to the increase in values, and possibly tenants in possession might purchase. Is there any way for applying to the court for an order for sale under L.P.A., ss. 25 and 26, otherwise the sale can be held up indefinitely?

A. While it is no doubt the primary duty of a trustee for sale to sell, we doubt if the court would make any order at the instance of the trustee in bankruptcy of the owner of a mere undivided quarter. Perhaps a sale of the quarter could be negotiated to one of the other co-owners.

Death of Devisee-Executrix without assenting in her own favour—Chain of Representation—Assent in favour of Devisee under the Deceased's Will.

Q. A died in 1930 having by his will given his real and personal property to his wife B absolutely and appointed her sole executor. B proved the will, but no assent in her favour in respect of the real property was made. B died in 1944, having by her will given her real property (being that given her by A's will) to C and appointed C her sole executor. Is it necessary, in order to perfect C's title to the real property, that she should take out letters of administration *de bonis non* to the estate of A and assent as such administrator to herself?

A. There is no question of a grant *de bonis non* in the estate of A. C as executrix of B, the executrix of A, is the executrix of A by way of the chain of representation. See A. of E.A., 1925, s. 7 (1). As executrix of A, C can thus assent in her own favour.

Will—Gift of a Debt—Ademption.

Q. A died recently, having by his will (*inter alia*) made the following provision: "My son X owes me £100, and this indebtedness I bequeath in equal shares of £50 between him and his son Y." X denies the existence of any loan and on behalf of himself and his son Y claims that he is entitled to £100 by way of a legacy. Assuming that A's executors are satisfied that X did not owe A £100, are they entitled to pay X and Y £50 each under the terms of the above bequest? Alternatively, have X and Y any legal claim to legacies of £50 each?

A. The gift to X and his son appears to us to a *specific* gift and is adeemed if the subject-matter thereof has ceased to exist at the death of the testator. Thus if the executors are satisfied that X did not at the death of A owe A £100, they are certainly not entitled to pay X and Y £50 each. We cannot see that X and Y have any claim whatever to ordinary pecuniary legacies of £50 each. As to the specific nature of the gift of the debt, see *Ellis* v. *Walker*, Amb. 309; *Re Wedmore* [1907] 2 Ch. 277.

CORRECTION.

In our "Current Topic" on the "Liabilities (War-Time Adjustment) Rules, 1944," at p. 402, of our issue of 2nd December, 1944, it was stated that it was no longer provided that preliminary hearings should be in private. Readers' attention is drawn to r. 70 of the new consolidated rules, which reads as follows: "All proceedings under the Act or the Act of 1944, whether in court or in chambers or before the adjustment officer, shall be in private."

Notes of Cases.

COURT OF APPEAL.

Battersby *v.* **Anglo-American Oil Co., Ltd.**

Lord Greene, M.R., and Goddard and du Parcq, L.JJ. 13th October, 1944.

Practice and procedure—Renewal of writ—Discretion of court—Defendants deprived of defence that action barred by limitation provision—R.S.C., Ord. VIII, r. 1; Ord. LXIV, r. 7.

Defendants' appeal from an order of Birkett, J., reversing an order of Master Baker setting aside a writ claiming damages under the Fatal Accidents Acts.

The writ was issued on 19th October, 1942, the death in respect of which it was issued having occurred on 20th October, 1941. It was not served on any of the defendants during the twelve months following its issue. On 18th January, 1944, an application for its renewal was refused. On 2nd May, 1944, the Court of Appeal gave judgment in *Holman* v. *George Elliott & Co.* (*ante*, p. 289) [1944] 1 K.B. 591, and on 22nd May a further application was made to Master Baker for the writ to be renewed. Master Baker refused the application and on appeal Stable, J., renewed the writ for six months from 18th October, 1943, and for a further six months from 17th April, 1944. The defendants, on being served, entered a conditional appearance and applied to set aside the writ and service, and Master Baker set the writ aside. On appeal, Birkett, J., set aside the order of Master Baker, the effect being that the appearance was rendered unconditional. The appellants contended that the effect of renewing the writ was to deprive them of the defence that the action was barred by s. 3 of the Fatal Accidents Act, 1846, providing that every action under the Act must be commenced "within twelve calendar months after the death of such deceased person." R.S.C., Ord. VIII, r. 1, provides that no original writ shall be in force for more than twelve months from the date thereof, including the day of such date, but if any defendant is not served the plaintiff may, before the expiry of the twelve months, apply for leave to renew the writ, and the court or a judge, if satisfied that reasonable efforts have been made to serve such defendant or for other good reasons, may order that the original writ be renewed for six months and so from time to time during the currency of the renewed writ, which is to remain in force and be available to prevent the operation of any limitation statute. When Stable, J., renewed the writ, not only had the time for renewal expired, but more than twelve months had elapsed since the death of the deceased.

LORD GODDARD, reading the judgment of the court, said that the plaintiffs contended that in view of the decision in *Holman* v. *George Elliott & Co.*, *supra*, the court had a discretion under R.S.C., Ord. LXIV, r. 7, to enlarge the time for renewing the writ. That the widest discretion was given to the court under the rule none would deny, but there was a line of authority, unbroken until the recent decision, to which reference had been made, that the court would not exercise that discretion in favour of the renewal, nor allow an amendment of pleadings to be made, if the effect of so doing would be to deprive a defendant of the benefit of a limitation which had already accrued. His lordship examined *Boyle* v. *Kaufman*, 3 Q.B.D. 7, 340; *In re Jones, Eyre* v. *Cox*, 25 W.R. 303; *Smallpage* v. *Tongue* (1886), 17 Q.B.D. 644; and *Hewett* v. *Barr* [1891] 1 Q.B. 98, and said that the last-mentioned case had never been questioned and was really conclusive of the present appeal. His lordship further referred to *Mabro* v. *Eagle Star and British Dominions Insurance Co.* [1932] 1 K.B. 485 and said that although *Holman's* case, *supra*, was a decision of the Court of Appeal, it was in conflict with earlier cases also decided in the Court of Appeal and in conformity with the decision of the full court in *Young* v. *Bristol Aeroplane Co.* (*ante*, p. 332) the Court of Appeal was at liberty to disregard it, and, in the opinion of the court, it should follow the earlier decisions. Even where an application for the renewal of a writ was made within twelve months of the date of issue, the jurisdiction given by the rule ought to be exercised with caution. In every case care should be taken to see that the renewal would not prejudice any right of defence then existing, and in any case it should only be granted where good reasons appeared to excuse the delay, as indeed was laid down in the order. The best reason would be that the defendant had been avoiding service or that his address was unknown, and there might well be others. But it was not ordinarily a good reason that the plaintiff desired to hold up the proceedings while some other case was tried, or to await some future development. The appeal was allowed and the writ was set aside.

COUNSEL: *Valentine Holmes; Scott Cairns; G. R. Mitchison; Sandlands*, K.C., and *G. Howard*.

SOLICITORS: *Simmons & Simmons; Berrymans; Coward, Chance & Co.; W. R. Bennett & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re **Powell; Neale** *v.* **Roberts.**

Vaisey, J. 1st November, 1944.

Will—Construction—Request of "sum producing a clear yearly sum of £60"—Method of assessing sum—Finance Act, 1941 (4 & 5 Geo. 6, c. 30), s. 25 (1).

Adjourned summons.

The testator by his will dated the 29th April, 1938, bequeathed to the Vicar and Churchwardens of the parish of S "such a sum as will produce after payment of tax and all other deductions the clear yearly sum of £60 to be applied by the said Vicar towards the payment of a stipend of an assistant priest appointed as hereinafter mentioned for the parish of S." The testator then gave directions as to the vesting of the fund in trustees and provided that all legacies should be free of legacy duty. This summons was taken out by the trustees of the will to have it determined how the capital sum bequeathed should be calculated.

VAISEY, J., said that the first method of computing the capital sum, which was suggested by the vicar and churchwardens, was that the gift was of a sum sufficient to produce, when it was handed over, a sum which, after deducting income tax at the current standard rate, would produce £60 a year—that was to say, as matters stood sufficient to produce £120 a year—and that s. 25 of the Finance Act, 1925, had no application. Those interested in residue submitted that as this was a gift to legatees upon a charitable trust, in respect of which no income tax would be payable, the amount which must be set aside was merely a sufficient sum to produce £60 a year disregarding income tax altogether. An intermediate view was that this was a case of a pre-war annuity given tax free and the provisions of s. 25 applied. Taking the minimum sum first: His difficulty in accepting that view was the reference to payment of tax. The ultimate object of the testator was to give to the curate money, which, with his other income, would be subject to tax in the usual way. He must reject the view that no more than £60 a year was to be provided. The question, therefore, was whether this was the gift of (*a*) an annuity which might be notionally regarded at the moment as £120 a year, or (*b*) an annuity of 20/29ths of that amount which would be a sum of £82 15s. 2d. Section 25 applied only to years in which income tax was 10s. in the £. The same remark applied to every provision for income tax. Income tax was an annual tax. In these cases where a sum had to be set apart to meet a clear net sum after payment of tax, it was necessary to fix the figure at the only rate which was known at the moment. On the wording of the section, where provision was made for the payment periodically of an amount free tax, when the rate was 10s. in the £, 20/29ths of that amount was the proper amount to which regard had to be had. The only measure he could fix for the calculation of this sum was to fix it at such a sum as would produce, after the payment of tax at the current rate, regard being had to s. 25 of the Act of 1925, a clear yearly sum of £60: that amounted to £82 15s. 2d., and he would make a declaration accordingly.

COUNSEL: *C. E. Shebbeare; H. E. Salt; S. P. Hayward; Wilfrid Hunt; Danckwerts.*

SOLICITORS: *Carter & Barber*, for *Frape & Gauntlett*, Brighton; *Official Solicitor; Griffinhoofe & Brewster; Raymond-Barker, Nix & Co.; Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF CRIMINAL APPEAL.

R. *v.* **Tearse and Others.**

Humphreys, Wrottesley and Tucker, JJ. 25th September 1944.

Criminal law—Acts done "in furtherance" of strike—Whether strike must have begun when acts committed—Trade Disputes and Trade Unions Act, 1927 (17 & 18 Geo. 5, c. 22), s. 1.

Appeals against convictions for acting in furtherance of a strike declared by s. 1 of the Trade Disputes and Trade Unions Act, 1927, to be illegal, and aiding and abetting the commission of such an illegal strike by aiding others to act in furtherance of the strike.

At the same trial as that in which they were convicted of these offences the appellants had been acquitted of charges of conspiracy to act in furtherance of a strike declared by s. 1 of the 1927 Act to be illegal, of conspiring to incite apprentices to declare such an illegal strike and inciting others to declare such an illegal strike. The evidence to support all the charges was taken together without any attempt to distinguish parts which supported any one charge from parts which supported any other charge. The strike in question was begun on 28th March. At the close of the evidence for the prosecution counsel for the defendants submitted that the words in the 1927 Act "to do an act in furtherance of a strike" presupposed the existence of a strike and that therefore nothing that took place before 28th March could be said to be such an act. The learned judge ruled that the prosecution were not confined to acts done after the strike began and summed up in accordance with this ruling.

WROTTESLEY, J., who delivered the judgment of the court, read the relevant parts of s. 1 (1) and (2) of the 1927 Act and said that apart from the consideration of previous legislation and the pronouncements upon it it might be difficult to suggest that any restriction should be placed upon the meaning of the word "furtherance." His lordship referred to s. 1 of the Trade Disputes Act, 1906, and *Conway* v. *Wade* [1909] A.C. 506, and the view of Lord Loreburn, L.C. and Lord Shaw that an act done in contemplation meant an act before the dispute arose and an act in furtherance meant an act done when the dispute had come into existence. There was nothing in s. 1 (2) of the 1927 Act to indicate that a wider meaning was to be attributed to the phrase. In the event acts done before a strike which were made crimes by the section were the matters mentioned *eo nomine*, i.e., declaring it, instigating it and inciting to it. Acts "otherwise in furtherance of a strike" which were made crimes by the section were acts done after the strike commenced. Therefore the convictions under those counts must be quashed. His lordship further observed that no particulars were either included in the indictment or demanded by the defence of the counts alleging acts in furtherance against the defendants. It was desirable that particulars of such acts should be included in the indictment. Appeals allowed.

COUNSEL: *J. C. Burge; Paley Scott*, K.C. and *John Charlesworth*.

SOLICITORS: *Smithdale, Rutledge & Co.; Director of Public Prosecutions.*

[Reported by MAURICE SHARP, Esq., Barrister-at-Law.]

Parliamentary News.

HOUSE OF COMMONS.

Expiring Laws Continuance Bill [H.C.].
Read Second Time. [6th December.

Local Elections and Register of Electors (Temporary Provisions) Act, 1939 (Continuance) Bill [H.C.].
To continue in force the Local Elections and Register of Electors (Temporary Provisions) Act, 1939.
Read First Time. [5th December.

Wages Councils Bill [H.C.].
To provide for the establishment of wages councils, and otherwise for the regulation of the remuneration and conditions of employment of workers in certain circumstances.
Read First Time. [5th December.

QUESTIONS TO MINISTERS.

STAFFING OF LAND REGISTRY.

Mr. W. J. BROWN asked the Attorney-General if he is aware of the serious delay in His Majesty's Land Registry both in the registration of title branch and the land charges branch; and if any plans are being made to remedy this or to cope with the inevitable increase of the department's work immediately after the end of the war with Germany.

The ATTORNEY-GENERAL: I am aware of the present delay in the registration of title branch of the Land Registry. It is entirely due to staffing difficulties, and I do not think that it could have been avoided. At the outbreak of war dealings in land fell off considerably and the staff of the Registry was greatly depleted by calls of National Service of various kinds. Recently there has been a marked revival in the work, and it has not been possible to increase the staff quickly enough to keep pace. I cannot promise an immediate improvement, but it is hoped that sufficient staff will be available to deal with the further increase of work which is expected after the end of the war with Germany. I am informed that at present there is no delay in the land charges branch of the Registry. [6th December.

COMPANY CONTROL: ENEMY ALIENS.

Captain P. MACDONALD asked the Secretary of State for the Home Department whether he will consider the introduction of legislation prescribing that no alien of enemy nationality may hold the controlling number of shares in any company, and that under all circumstances an available British subject shall be given a preferential claim to employment over any such alien, providing he is capable of doing the work in question.

Mr. HERBERT MORRISON: I cannot undertake to introduce legislation on these or related matters at present. In any case, the issues are not as simple as might appear from my hon. and gallant friend's question. For example, many refugees from Nazi oppression and other aliens of enemy nationality have materially contributed to the war effort of the United Nations as members of the forces or as civilians, while others have rendered valuable services by establishing industrial enterprises giving employment to British workers to the advantage of the national economy. [7th December.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

E.P. 1295. **Civilian Clothing** (Restrictions) (No. 4) Order, Nov. 24.
E.P. 1326. **Limitation of Supplies** (Heating Apparatus) Order, Nov. 28.
E.P. 1323/S.64. **Regulated Areas** (No. 1) Order (Amendment) Order, Nov. 30.
E.P. 1324. Regulated Areas (No. 2) Order (Amendment) Order, Nov. 30.
No. 1346. **Secondary Schools** Amendment Regulations No. 3, 1944. Nov. 30, 1944. (Grant Regulations No. 10, Amendments No. 3).
No. 1327. **Supreme Court,** Northern Ireland Winter Assize Order, Nov. 3.

STATIONERY OFFICE.

LIST of Statutory Rules and Orders issued during November, 1944.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

Notes and News.

Honours and Appointments.

The King has approved a recommendation of the Home Secretary that Mr. BENTLEY HERBERT WADDY be appointed Recorder of Margate in the place of Mr. Robert Abercromby Gordon, K.C., who has resigned. Mr. Waddy was called by the Inner Temple in 1920.

The King has approved the appointment of Mr. REUBEN COHEN to be Deputy Chairman of the Court of Quarter Sessions of the County of Durham.

Mr. JAMES W. G. RICHARDSON, Senior Assistant Solicitor to the Wakefield County Borough Corporation, has been appointed Deputy Town Clerk of Beddington and Wallington, in succession to Mr. Charles P. Clarke, who has been appointed Town Clerk, on the retirement of Mr. T. Booth. Mr. Richardson was admitted in 1941, and Mr. Clarke in 1937.

Notes.

The Air Ministry has released Squadron Leader C. F. Nicholson, R.A.F., so that he can resume his duties as Town Clerk of Folkestone.

Mr. Charles William Chandler, principal clerk in the High Court of Justice, in Bankruptcy, retires at the end of this month after forty-four years' service.

At the monthly meeting of the Directors of the Solicitors' Benevolent Association, held on the 6th December, 1944, grants amounting to £2,518 9s. 4d. were made to thirty-seven beneficiaries.

The usual monthly meeting of the directors of the Law Association was held on the 4th December, Mr. C. A. Dawson in the chair. There were six other directors present. A sum of £175 10s. was voted in relief of deserving applicants; two new members were elected; and other general business was transacted.

On and after the 1st January, 1945, the Royal Insurance Co., Ltd., will, on the expiry of the current policies of its subsidiary, The Legal Insurance Co., Ltd., assume direct responsibility to the policy-holders. As regards new business, "Royal" policies will be issued. This only applies to insurances in Great Britain and Northern Ireland and does not affect business in Eire and overseas generally.

The fifty-third annual meeting of the Hampshire Incorporated Law Society was held at Southsea on Friday, 24th November, when the following officers were elected. President, J. T. Coggins (Aldershot); Vice-President, P. C. Mead (Southampton). The retiring members of the Committee were re-elected, together with D. H. B. Harfield (Southampton). Hon. Auditors, H. White (Winchester) and J. H. A. Yearsley (Southampton). Hon. Secretary and Hon. Treasurer, L. F. Paris (Southampton); and Board of Legal Studies, L. F. Paris, Major Bullin (Portsmouth) and C. E. Martin (Southampton).

It has recently been stated in one or two quarters that special committees are to be set up by the Board of Trade to deal with applications for retail trade licences. The Board of Trade wish it to be known that such statements are entirely without foundation. The licensing arrangements under the Location of Retail Businesses Order will continue, as hitherto, to be administered on behalf of the Board of Trade by Local Price Regulation Committees, and in the London region by the Local Retail Licensing Committee. The Board have asked the British Legion to nominate an additional member to serve on each of the committees.

Wills and Bequests.

Mr. William Bygott, solicitor, of Raleigh, Essex, left £14,137. He left numerous bequests to members of his staff.

Mr. Arthur James Ellaby, solicitor, of Southampton, left £51,245, with net personalty £43,855.

Mr. Walter James Forbes, solicitor, of Cheltenham, left £9,439, with net personalty £8,322.

Mr. John Lusk, J.P., solicitor, of Ayr, and of Dalry, left personal estate £35,375.

Mr. Edwin Peace, solicitor, of Liverpool, left £33,575, with net personalty £20,880.

Mr. A. S. F. Pruen, solicitor, of Cheltenham, left £18,668, with net personalty £15,586.

Lord Romer, P.C., of Tadworth, Surrey, left £38,806, with net personalty £35,193.

Major John Wall, solicitor, of Wigan, left £21,282, with net personalty £16,374.

Major Lionel Wigram, Royal Fusiliers, solicitor, of Merrow, Surrey, left £50,122 with net personalty £21,972.

Mr. F. A. Wilshire, Recorder of Bridgwater, left £8,004, with net personalty £4,640.

Court Papers.

Supreme Court of Judicature.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Morton.
Mon., Dec. 18	Mr. Reader	Mr. Andrews	Mr. Jones
Tues., 19	Hay	Jones	Reader
Wed., 20	Farr	Reader	Hay
Thurs., 21	Blaker	Hay	Farr
Fri., 22	Andrews	Farr	Blaker
Sat., 23	Jones	Blaker	Andrews

	Group A.		Group B.	
Date.	Mr. Justice Cohen. *Witness.*	Mr. Justice Vaisey *Non-Witness.*	Mr. Justice Uthwatt *Witness.*	Mr. Justice Evershed *Non-Witness.*
Mon., Dec. 18	Mr. Farr	Mr. Blaker	Mr. Reader	Mr. Hay
Tues., 19	Blaker	Andrews	Hay	Farr
Wed., 20	Andrews	Jones	Farr	Blaker
Thurs., 21	Jones	Reader	Blaker	Andrews
Fri., 22	Reader	Hay	Andrews	Jones
Sat., 23	Hay	Farr	Jones	Reader

The Christmas Vacation will commence on Monday, 25th December, 1944, and terminate on Saturday, 6th January, 1945.